

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 150 OF 2017

MANJU A. LULLA.,

... Petitioner

Versus

STATE OF GOA THR. PUBLIC
PROSECUTOR AND 2 ORS.,

... Respondents

Mr. Karam Komireddy with Mr. Jitendra P. Supekar, Advocates
for the Petitioner.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent Nos. 1
and 2.

Mr. Damodar Dhond with Mr. Vibhav Amonkar, Advocates for
the Respondent No. 3.

Coram:- C. V. BHADANG, J.

Date:- 27th September 2017

P.C:

Heard learned Counsel for the petitioner, the learned Public
Prosecutor for the respondent nos. 1 and 2 as also the learned
Counsel appearing for the respondent no. 3.

2. The petitioner, who is the complainant is challenging the
order dated 08.08.2017, passed by the learned Additional
Sessions Judge at Mapusa, thereby granting anticipatory bail to
the respondent no. 3 on certain conditions.

3. On the basis of the complaint lodged by the petitioner, an
offence under Sections 376, 328, 307 and 394 of IPC was

registered against the respondent no. 3 with P.S. Calangute. The complaint is stated to be under investigation.

4. As per the complaint lodged by the petitioner, in the year 2015 the petitioner alongwith her family had gone to Dubai for holidays, where she met the respondent no. 3 and they developed friendship. After the complainant returned from Dubai to Ulhasnagar, the respondent no. 3 used to visit Ulhasnagar and induce and force the petitioner to come and meet him in a hotel room. It was complained that the respondent no. 3 called the petitioner from Dubai on 08.06.2017 informing that he will be coming to Ulhasnagar and both of them will flee and will get married. On 09.06.2017 at 15:30 hours, the petitioner left the house and the petitioner and the respondent no. 3 met at Thane, where they hired a Taxi to Pune and stayed at Pune for a night in a lodging house. According to the petitioner, the respondent no. 3 used to have forcible sexual intercourse, without her consent. A perusal of the complaint would show that the petitioner accompanied the respondent no. 3 to Goa, where they spent some days. According to the petitioner, the respondent no. 3 had sexual intercourse without her consent even at Goa. The petitioner claimed that there was also an attempt by the respondent no. 3 to administer some drugs to her and causing injuries to her.

5. The learned Sessions Judge has granted anticipatory bail on the ground that the petitioner had willingly accompanied the respondent no. 3. The learned Sessions Judge also noticed that it was the respondent no. 3, who brought the petitioner to the Manipal Hospital. These are some of the reasons, which have prompted the learned Sessions Judge to grant the anticipatory bail.

6. It is contended by the learned Counsel for the petitioner that the learned Sessions Judge has only confined the consideration to Section 376 of IPC and there is no consideration insofar as offences under Section 328, 307 and 394 of IPC are concerned, which are serious in nature. Secondly, it is contended that even assuming that there is consent at one point, it cannot be presumed that the petitioner continued to consent for sexual intercourse. Thirdly, it is contended that the findings of the learned Sessions Judge that the respondent no. 3 informed the parents of the complainant is incorrect. It is further contended that there is no statement of the complainant, which is recorded on 18.06.2017, which has been noticed by the learned Sessions Judge in para 8 of the impugned order.

7. The learned Public Prosecutor pointed out that for the present, the respondent no. 3 is co-operating with the investigating agency. He submits that the medical history given

by the complainant in the Manipal Hospital states that the injuries were self inflicted and prima facie, the nature of the injuries are found to be simple.

8. The learned Counsel for the respondent no. 3 has supported the impugned order. It is submitted that it is the respondent no. 3, who got the petitioner admitted in the hospital and that the respondent no. 3 is co-operating with the investigating agency and would abide with any conditions as may be deemed fit by this Court.

9. I have carefully considered the rival circumstances and the submissions made. Prima facie, at this stage, it appears that, the petitioner fled from her house, on her own with the respondent no. 3 and they stayed at Pune as well as Goa, where according to the complainant, she was subjected to forcible sexual intercourse.

Thus, prima facie, the findings of the learned Sessions Judge about the consent, cannot be said to be incorrect or infirm.

10. Insofar as the offence under Section 307 of IPC is concerned, prima facie, it appears that the injuries which are found on the person of the petitioner are shown to be simple in nature and that apart, the history given by the petitioner is that the injuries are self inflicted. The respondent no. 3 has co-operated with the investigating agency. In the overall

circumstances, in my view, no case for interference is made out. However, the apprehension expressed on behalf of the petitioner that as the respondent no. 3 immediately after getting the petitioner admitted in the hospital, went to Dubai and may not be available for trial can be taken care of by directing the respondent no. 3 to surrender his passport before the learned Sessions Judge, during the pendency of the investigation. This shall be subject to further orders as may be passed by the learned Sessions Judge. The respondent no. 3 shall surrender his passport within three days from today. The respondent no. 3 shall co-operate with the investigating agency and shall attend the Investigating Officer as and when required and shall not tamper with the prosecution evidence or witness.

11. The Criminal Writ Petition stands disposed of in the aforesaid terms.

C. V. BHADANG, J.

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